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| 10/826,074 | 04/15/2004 | Tilman Herberger | 57616/03-262 | 9986 |
| 22206 7590 04/06/2007 FELLERS SNIDER BLANKENSHIP BAILEY & TIPPENS THE KENNEDY BUILDING 321 SOUTH BOSTON SUITE 800 TULSA, OK 74103-3318 | | | EXAMINER VU, THANH T | |
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| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/826,074

Applicant(s)

HERBERGER ET AL.

Examiner

Thanh T. Vu

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-4 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 2-4 and 12-14, the phrase "wherein is provided" renders the claim(s) indefinite because the claim fails to show "what" is provided. Accordingly, the examiner disregards the limitations come after the phrase.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Foote et al. ("Foote", U.S. Pat. No. 2003/0160944).

Per claim 1, Foote teaches a method of aligning a video work with an audio work, wherein said audio and video works are configurable to be played in concert with each other, comprising the steps of:

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a. automatically selecting a plurality of audio markers in said audio work, each of said selected audio markers having an audio time of occurrence associated therewith (figs. 1 and 2; *change detect 120*; [0037]);

b. identifying at least one video marker within said video work, each of said identified video markers having a video time of occurrence associated therewith (figs. 1-3; *change detect 115*; [0043]);

c. selecting one of said identified video markers and said video time of occurrence associated therewith (figs. 1 and 3; [0039]; [0042]);

d. selecting a video transition to apply at said selected video marker (figs. 1 and 3; [0039]; [0043]);

e. automatically selecting one of said plurality of audio markers, wherein said time of occurrence of said selected audio marker is proximate to said video time of occurrence of said selected video marker (figs. 4-7; [0051]);

f. automatically synchronizing said video transition with said selected audio marker (figs. 4-7 *show aligning of video and audio data*; in addition see, [0051]);

g. applying said synchronized video transition to said video work proximate to said video marker, thereby creating an aligned video work (figs. 4-7; [0051]); and,

h. storing said aligned video work on a computer readable medium ([0074]).

Per claim 2, Foote teaches a method of aligning a video work with an audio work according to Claim 1, wherein step (a) comprises the steps of: (a1) selecting at least one of said provided audio criteria, (a2) using at least one of said selected audio criteria to identify at least two change points within said audio work, (a3) selecting a plurality of said at least two identified

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change points, thereby identifying a plurality of audio markers within said audio work (figs. 3-7; ([0056]; [0063])).

Per claim 3, Foote teaches a method of aligning a video work with an audio work according to Claim 2,

wherein step (a) comprises the steps of: (a1) selecting a highest priority audio criterion from among said plurality of audio criteria according to said provided priority ordering, (a2) using said selected audio criterion to identify at least two change points within said audio work, (a3) selecting a plurality of identified change points, thereby identifying a plurality of audio markers within said audio work (figs. 3-7; ([0056]; [0063])).

Per claim 4, Foote teaches a method of aligning a video work with an audio work according to Claim 1, wherein step (e) comprises the steps of:

(e1) choosing one of said plurality of audio markers, wherein said time of occurrence of said selected audio marker is proximate to said video time of occurrence of said video marker (figs. 4-7 *show aligning of video and audio data*; in addition see, [0054]; [0056]; [0063]),

(e2) determining from said provided criterion whether said chosen audio marker is suitable for use with said selected video marker (figs. 4-7; [0054]; [0056]; [0063]),

(e3) if said chosen audio marker is determined to be suitable for use with said selected video marker, selecting said chosen marker (figs. 4-7; [0054]; [0056]; [0063]),

(e4) if said chosen audio marker is determined not to be suitable for use with said selected video marker according to said criterion, performing steps (e1) through (e3) until either one of said chosen audio markers is found to be suitable or until all of said plurality of audio markers have been chosen (figs. 4-7; [0054]; [0056]; [0063]) and,

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(e5) if after performing steps (e 1) through (e4) none of said plurality of audio markers is suitable for use with said selected video marker, taking no further action with respect to the selected video marker (figs. 4-7 *show aligning of video and audio data*; in addition see, [0054]; [0056]; [0063]).

Per claim 5, Foote teaches a method of aligning a video work with an audio work according to Claim 1, comprising the further steps of: (i) reading said stored aligned video work from said computer readable media; and (j) playing said aligned video work on a display device ([0074]).

Per claim 6, Foote teaches a method of aligning a video work with an audio work according to Claim 1, wherein said computer readable medium is selected from the group consisting of computer RAM, non-volatile RAM, magnetic disk, a RAM card, optical disk, magneto-optical disk, and a floppy disk ([0074]).

Per claim 7, Foote teaches a method of creating an aligned multimedia work, wherein is provided a video work comprising at least two video clips, each of said at least two video clips having a displayed length and an actual length associated therewith, and wherein is further provided an audio work, said audio and video works being configurable to be played in concert with each other, comprising the steps of:

a. automatically determining a plurality of audio markers in said audio work, each of said audio markers having an audio time of occurrence associated therewith (figs. 1 and 2; *change detect 120*; [0037]);

b. identifying at least one video marker within said video work, each of said identified video markers having a video time of occurrence associated therewith and at least one of said

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video markers being associated with two adjacent video clips (figs. 1-3; *change detect 115*; [0043]);

c. selecting one of said video markers associated with two adjacent video clips, said two adjacent video clips associated with said selected video marker comprising a first earlier-occurring video clip and a second later-occurring video clip (figs. 7 and 8; cuts 712, and 715; [0071]; [0077]));

d. determining a displayed length and an actual length of said first video clip (fig. 8; [0077]; [0078]);

e. determining a starting time and an ending time within said video work of said first video clip (fig. 8; *the in and out point of a clip*; [0077]; [0078]);

f. determining a displayed length and an actual length of said second video clip (fig. 8; timeline 820; [0077]; [0078]);

g. determining a starting time and an ending time within said video work of said second video clip, said ending time of said first video clip being at least approximately equal to said starting time of said second video clip (fig. 8; *the in and out point of a clip*; [0077]; [0078]);

h. selecting an audio marker proximate to said ending time of said first video clip, said selected audio marker having a time of occurrence associated therewith (figs. 4-7; [0051]; [0053]);

i. if said selected audio marker occurs before said ending time of said first video clip, (i1) decreasing said displayed length of said first video clip until it has a new ending time at least approximately equal to said time of occurrence of said selected audio marker, and, (i2) increasing said displayed length of said second video clip until it has a new starting time

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approximately equal to said time of occurrence of said selected audio marker, wherein said ending time of said second video clip is left at least approximately unchanged ([0054]; [0056]);

j. if said selected audio marker occurs after said starting time of said second video clip, (j1) increasing said displayed length of said first video clip until it has a new ending time at least approximately equal to said time of occurrence of said selected audio marker, and, (j2) decreasing said displayed length of said second video clip until it has a starting time approximately equal to said time of occurrence of said selected audio marker, wherein said ending time of said second video clip is left at least approximately unchanged ([0054]; [0056]);

k. performing steps (c) through (j) at least once, thereby creating an aligned video work (figs. 4-7 show *aligning of video and audio data*; in addition see ([0051]; [0053]));

l. storing said aligned video work in a first computer readable medium ([0074]); and,

m. storing said audio work in a second computer readable medium, said aligned video work and said audio work taken together creating said aligned multimedia work ([0074]).

Per claim 8, Foote teaches a method of creating an aligned multimedia work according to Claim 7, further comprising the steps of:

(n) reading at least a portion of said aligned video work from said computer readable medium, (o) reading at least a portion of said audio work wherein said at least a portion of said audio work that is read corresponds to portion of said aligned video work that is read, and, (p) playing in concert said at least a portion of said aligned video work and said at least a portion of said audio work ([0073];[0074]).

Per claim 9, Foote teaches a method of aligning a video work with an audio work, wherein said audio and video works are configurable to be played in concert, comprising the steps of:

- a. determining a plurality of audio markers in said audio work (figs. 1 and 2; *change detect 120*; [0037]);
- b. automatically identifying at least one video marker within said video work, wherein said at least one video marker corresponds to a discontinuity in said video work (figs. 1 and 2; *change detect 120*; [0037]);
- c. selecting one of said identified video markers (figs. 1-3; *change detect 115*; [0043]);
- d. selecting a video transition to apply at said selected video marker, said selected video transition having at least one transition parameter associated therewith (figs. 1-3; *change detect 115*; [0043]);
- e. selecting one of said plurality of audio markers, said selected audio marker being proximate in time to said selected video marker (figs. 4-7; [0051]);
- f. synchronizing said video transition with said selected audio marker by modifying at least one of said selected transition parameters (figs. 4-7; [0051]; [0071]);
- g. applying said synchronized video transition to said video work proximate to said selected video marker according to said modified transition parameter (figs. 4-7 *show aligning of video and audio data*; in addition see [0051]; [0071]); and,
- h. playing in concert said aligned video work and said audio work, thereby creating an aligned multimedia work ([0073]; [0074])

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Per claim 10, Foote teaches a method of aligning a video work with an audio work according to Claim 9, further comprising the step of: i. writing said aligned video work and said audio work to a computer readable medium ([0074]).

Per claim 11, Foote teaches a method of aligning a video work with an audio work according to Claim 10, wherein said computer readable medium is selected from the group consisting of computer RAM, non-volatile RAM, magnetic disk, a RAM card, optical disk, magneto-optical disk, and a floppy disk [0074]).

Claims 12-14 are rejected under the same rationale as claims 2-4 respectively.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh T. Vu whose telephone number is (571) 272-4073. The examiner can normally be reached on Mon-Thur and every other Fri 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L. Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from

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a USPTO Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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